The court held that the title obtained by the partition and sale proceedings was defective, since the contingent interests of the grandchildren not then *in esse,* who later took under the will, had not been properly represented. By statute in New York, expectant estates of persons, whether *in esse* or not, may be bound by a judgment of partition.[13] But it is also the rule in New York that a sale which is the result of partition proceedings will not be effective as to contingent interests of persons not *in esse,* unless the judgment provides for and protects such interests by substituting and preserving a fund commensurate in value with them.[14] No such provision having been made in the principal case, the judgment in the partition suit did not bar the estates in expectancy of the unborn grandchildren. Aside from this, however, there was no representation of the grandchildren not *in esse,* since the children, who might under ordinary circumstances properly represent such future rights, refused to recognize any contingent interests and divided the property among themselves on the theory of complete ownership, so that the rights of the children instead of being practically identical with, were actually hostile to, those of the grandchildren.[15]

FORCIBLE ENTRY AND DETAINER.—Forcible entry and detainer, though commonly alleged in the same complaint, are, in most jurisdictions, separate and distinct torts.[1] Two fundamental requisites underlie both actions: the plaintiff must have been in actual, peaceable possession of the premises,[2] and he must have been ousted from that possession by the forcible entry, or the forcible detainer, charged against the defendant.[3] Under this state of facts, relief is granted on the theory that the disturbance of any peaceable possession tends to breach of the peace;[4] and since this result accrues irrespective of the relative rights of the parties, legal title to the premises cannot be interposed as a defense to these actions.[5]

In the absence of express statutory provision, no particular duration of plaintiff's possession is required,[6] but it must have been exclusive and not scrambling.[7] The plaintiff need not have actually

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[13]N. Y. Code of Civ. Proc., § 1557. For a discussion of the procedure for partition under the N. Y. Code, see article by Surrogate Robert L. Fowler in 3 Columbia Law Rev., 295.

[14]Monarque *v.* Monarque (1880) 80 N. Y. 320.

[15]See Downey *v.* Seib (1906) 185 N. Y. 427.

[1]Shelby *v.* Houston (1869) 38 Cal. 410; see Fults *v.* Munro (1911) 202 N. Y. 34.

[2]Brooks *v.* Warren (1886) 5 Utah 118; Hopkins *v.* Calloway (1855) 35 Tenn. 11.

[3]Schmidberger *v.* Bloner (N. Y. 1892) 66 Hun 527.

[4]See 2 Cooley, Torts (3rd ed.) 663.

[5]Stephens *v.* McCloy (1873) 36 Iowa 659; Sitton *v.* Sapp (1895) 62 Mo. App. 197; Hammond *v.* Doty (1900) 184 Ill. 246. But the question of title may come up as a collateral issue, as where an occupant under color of title to an entire tract of land, takes open, visible possession of some definite part, thereby gaining constructive possession of the whole. Seals *v.* Williams (1902) 80 Miss. 234.

[6]Cain *v.* Flood (1891) 14 N. Y. Supp. 776, affd. (1893) 138 N. Y. 639.

[7]Blake *v.* McCray (1888) 65 Miss. 443; Brooks *v.* Warren, *supra.*

resided on the premises,[8] for possession may be maintained by agents or tenants, by personal chattels kept on the premises,[9] or, according to the better view, by merely securing the entrances in such a manner as to manifest an intention to exercise continued dominion.[10]

On all questions of sufficiency of possession the courts are fairly well agreed, but in the determination of the amount of force necessary to support the actions, there is utter confusion. Many States still adhere to the old definition of force, developed in criminal actions,[11] that mere trespass is insufficient and that there must be actual or threatened violence to the person of the occupant or manifestations of a determination to exercise force sufficient to place the occupant in fear of imminent peril should he offer resistance.[12] An increasingly large number of States, however, give summary relief against a defendant who has entered against the will of the occupant,[13] or without his consent,[14] or under other circumstances not amounting to actual or threatened violence.[15] This change is largely due to the insertion of the word "unlawful" in the statutes. In some cases, the interpretation necessarily raises the question of title, and thus makes the action a substitute for ejectment.[16]

In the recent case of *Hammond Savings & Trust Co.* v. *Boney* (Ind. 1915) 107 N. E. 480, the plaintiff was a sub-tenant under an expired lease, holding over after notice to quit. The defendant, owner of the premises, entered during the plaintiff's absence, barricaded the doors and forcibly resisted the plaintiff's attempt to re-enter. The court held that the entry, though peaceable when made, was so qualified by the subsequent acts of the defendant as to render it forcible within the meaning of the statute. The decision is not fully sup-

[8]Shelby *v.* Houston, *supra*; Zuercher *v.* Startz (1909) 53 Tex. Civ. App. 442. Although mere temporary or occasional absence will not justify the presumption of abandonment, the presumption may arise from continued absence coupled with other circumstances indicating an intention to abandon. Hopkins *v.* Calloway, *supra*.

[9]Lorah *v.* Emmerson (1907) 154 Ala. 145; Hammond *v.* Doty, *supra*.

[10]Sitton *v.* Sapp, *supra*; *contra*, Hopkins *v.* Buck (1820) 10 Ky. *110.

[11]For an historical account of the early statutes and the development of the criminal action, see 2 Wharton, Criminal Law, *1554, *et seq.*

[12]Saunders *v.* Robinson (Mass. 1842) 5 Metc. 343; Richter *v.* Cordes (1894) 100 Mich. 278, 285; Mastin *v.* May (Minn. 1914) 148 N. W. 893; Berry *v.* Williams (1848) 21 N. J. L. 423; Fults *v.* Munro, *supra*; Iron Mountain etc. R. R. *v.* Johnson (1887) 119 U. S. 608; Smith *v.* Reeder (1892) 21 Ore. 541; Foster *v.* Kelsey (1863) 36 Vt. 199. And in some jurisdictions, this interpretation of the law has persisted even where the phraseology of the statutes might easily have led to a different result. See Miller *v.* Plummer (1912) 105 Ark. 630; Carter *v.* Van Dorn (1874) 36 Wis. 289. It is also essential that the force be exercised with manifest intent to oust the occupant. See Castro *v.* Tewksbury (1886) 69 Cal. 562; Rouse *v.* Dean (1845) 9 Mo. 301.

[13]Hammond *v.* Doty, *supra*; Seals *v.* Williams, *supra*; Tolbert *v.* Hendrick (1898) 77 Mo. App. 272.

[14]Dutchers *v.* Sanders (Cal. 1912) 129 Pac. 809; Young *v.* Young (1900) 109 Ky. 123, 129; Feder *v.* Hager (1908) 64 W. Va. 452.

[15]Lorah *v.* Emmerson, *supra*; Wells *v.* Darvy (1893) 13 Mont. 504; Post *v.* Bohner (1888) 23 Neb. 257; Bilby *v.* Brown (1913) 41 Okla. 98; Cleage *v.* Hyden (1871) 15 Tenn. 73, 79; see Emsley *v.* Bennett (1873) 37 Iowa 15; Campbell *v.* Coonradt (1879) 22 Kan. 504.

[16]See Post *v.* Bohner, *supra*.

ported by the authorities it cites and overlooks the real issue. The defendant had actual, peaceable possession as soon as he had gained access to the room and had barricaded the doors;[17] and the peaceable character of his entry could not be affected by the relation back of any subsequent acts.[18] There remained the sole question, not considered by the court, of forcible detainer; and this presents considerable difficulty. On the one hand, it is recognized that one who has title to land and is in peaceable possession thereof may defend his possession by force.[19] On the other hand, we are confronted by the rule that no question of title will be heard. It would seem that the only just and satisfactory solution of this difficulty lies in allowing title to be pleaded where there has been a forcible detainer after a peaceable entry,[20] although it is equally manifest that such a plea should furnish no defense to an allegation of forcible entry in any jurisdiction where forcible still means forcible, and not merely unlawful.

CONSTITUTIONALITY OF BLUE SKY LAWS.—A desire to stop the sale of fraudulent securities[1] has of late years resulted in a number of States in legislation known as Blue Sky Laws.[2] These usually provide that before stocks or bonds may be sold in the State, the seller must file a statement of solvency and a description of the securities to be sold with some officer, who shall forbid the sale of any or all of the investments offered if they seem to him unlikely to return a reasonable income. As a rule, all sales are forbidden for thirty days after the filing of such information, and the seller is required to pay a license fee, to make annual financial reports, and, if a non-resident, to agree to accept the service of process on some state officer as personal service. In Florida, such a statute expressly applied only to corporations, and was held constitutional on the ground that the legislature could regulate domestic corporations which it created, and could prescribe the terms on which foreign corporations might do business in the State.[3] The West Virginia statute, however, which was under consideration in the recent case of *Bracey* v. *Darst* (D. C. N. D. W. Va. 1914) 218 Fed. 482, applied not only to corporations but also to individuals

[17]The cases cited in which the defendant, after coming peaceably upon the premises, forcibly expels the plaintiff, are not in point. An entry is never complete until the occupant is actually excluded from the premises. Edwick *v.* Hawkes, L. R. [1881] 18 Ch. Div. 199.

[18]Tischler *v.* Knick (N. Y. 1899) 26 Misc. 738; Hoffman *v.* Harrington (1870) 22 Mich. 52; Richter *v.* Cordes, *supra.*

[19]Towell *v.* Edder (1900) 69 Ark. 34; Potter *v.* Mercer (1879) 53 Cal. 667, 674.

[20]See Feder *v.* Hager, *supra.*

[1]See Alabama & N. O. Trans. Co. *v.* Doyle (D. C. 1914) 210 Fed. 173.

[2]Such statutes have been enacted or considered in twenty-three States. See C. A. Dykstra, Blue Sky Legislation, 7 American Political Science Rev., 230, where the different provisions of the various statutes are indicated.

[3]*Ex parte* Taylor (Fla. 1914) 66 So. 292. Corporations are not citizens under Art. 4, § 2, of the Constitution, providing that citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States; Paul *v.* Virginia (1868) 8 Wall. 168; and as the domestic corporation involved was organized after the enactment of the law, no question as to the impairment of charter rights arose.